

By: Capriglione, Zerwas, Roberts, Walle

H.B. No. 18

Substitute the following for H.B. No. 18:

By: Dean

C.S.H.B. No. 18

A BILL TO BE ENTITLED

AN ACT

1
2 relating to oversight of and requirements applicable to state
3 contracts and other state financial and accounting issues,
4 including the delivery of certain Medicaid medical transportation
5 program services; providing a civil penalty.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 ARTICLE 1. GENERAL STATE CONTRACTING AND OTHER FINANCIAL ISSUES

8 SECTION 1.01. Section [321.013](#), Government Code, is amended
9 by adding Subsection (m) to read as follows:

10 (m) In devising the audit plan under Subsection (c), the
11 State Auditor shall consider the performance of audits of programs
12 operated by health and human services agencies that:

13 (1) have not recently received audit coverage; and

14 (2) have expenditures of less than \$100 million per
15 year.

16 SECTION 1.02. Chapter [322](#), Government Code, is amended by
17 adding Section 322.025 to read as follows:

18 Sec. 322.025. REPORT ON CONTRACT SPENDING. (a) In this
19 section, "state agency" has the meaning assigned by Section
20 [2056.001](#).

21 (b) Not later than September 15 of each year, the board
22 shall issue a report detailing how much of each state agency's
23 budget for the previous state fiscal year was spent on contracts.

24 SECTION 1.03. Section [441.1855](#), Government Code, is amended

1 to read as follows:

2 Sec. 441.1855. RETENTION OF CONTRACT AND RELATED DOCUMENTS
3 BY STATE AGENCIES. Notwithstanding Section 441.185 or 441.187, a
4 state agency:

5 (1) for each contract entered into by the agency,
6 shall retain in its records, to the extent the documents exist,
7 [each contract entered into by the state agency and] all contract
8 planning, solicitation, evaluation, monitoring, modification, and
9 closeout documents related to the contract, including at a minimum:

10 (A) a copy of all general and internal
11 correspondence related to the contract;

12 (B) the records or minutes of all internal or
13 external meetings related to the contract, including sign-in sheets
14 or agendas;

15 (C) a copy of all contractor invoices provided
16 under the contract;

17 (D) any information relating to discount
18 provisions for prompt payment under the contract and any letters
19 related to contract price deductions or fee adjustments;

20 (E) a copy of all supporting documentation for
21 contractor payments or progress payments under the contract;

22 (F) a copy of any audits performed involving the
23 contract; and

24 (G) a copy of all conflict of interest
25 documentation and forms required by law related to the contract;

26 and

27 (2) shall retain ~~may destroy~~ the contract and

1 documents described by Subdivision (1) until:

2 (A) [~~only after the seventh anniversary of~~] the
3 date[~~+~~

4 [~~(A)~~] the contract is completed or expires; and
5 [~~or~~]

6 (B) if [~~all~~] issues [~~that~~] arise from any
7 litigation, claim, negotiation, audit, open records request,
8 administrative review, or other action involving the contract or
9 documents, the seventh anniversary of the date the issues are
10 resolved.

11 SECTION 1.04. Section [531.102](#), Government Code, is amended
12 by adding Subsection (a-7) to read as follows:

13 (a-7) The inspector general shall appoint oversight
14 personnel to audit, review, and investigate high-risk contracts and
15 procurement and contracting processes of the commission, as
16 identified by the office of inspector general, and provide on a
17 quarterly basis reports on the monitoring to the inspector general,
18 attorney general, and governor. The quarterly reports must be
19 posted on the commission's publicly accessible Internet website.
20 The oversight personnel may work with the state auditor's office,
21 governor's office, Legislative Budget Board, attorney general's
22 office, quality assurance team established under Section [2054.158](#),
23 and contract advisory team established under Subchapter C, Chapter
24 [2262](#), in performing the oversight personnel's duties under this
25 subsection.

26 SECTION 1.05. Section [2102.0091\(c\)](#), Government Code, is
27 amended to read as follows:

1 (c) In addition to the requirements of Subsection (a), a
2 state agency shall file with the Governor's Office of Budget,
3 Planning, and Policy, the state auditor, and the Legislative Budget
4 Board an [~~any~~] action plan or other response issued by the state
5 agency's governing board or the administrator of the state agency
6 if the state agency does not have a governing board in response to
7 every issue identified in the report of the state agency's internal
8 auditor.

9 SECTION 1.06. Chapter 2115, Government Code, is amended by
10 adding Section 2115.006 to read as follows:

11 Sec. 2115.006. OVERPAYMENTS BY STATE AGENCY. (a) If a
12 state agency makes an overpayment to a vendor, the vendor must
13 return the amount overpaid by the agency before the 91st calendar
14 day after the date either party discovers the overpayment. If the
15 amount overpaid by the state agency is not returned before the 91st
16 calendar day, the vendor is subject to a civil penalty in an amount
17 equal to three times the amount of the overpayment and the agency
18 shall refer the matter to the attorney general for action.

19 (b) The attorney general may institute an action in district
20 court to recover a civil penalty under this section. A civil
21 penalty recovered in an action brought by the attorney general
22 shall be deposited in the state treasury.

23 SECTION 1.07. Section 2155.074(c), Government Code, is
24 amended to read as follows:

25 (c) A state agency shall consult with and receive approval
26 from the comptroller in an open meeting [~~commission~~] before
27 considering factors other than price and meeting specifications

1 when the agency procures through competitive bidding goods or
2 services with a value that exceeds \$100 million [~~\$100,000~~]. The
3 state agency shall retain in the agency's records a copy of the
4 meeting minutes with the final executed contract.

5 SECTION 1.08. Section 2155.077(a-2), Government Code, is
6 amended to read as follows:

7 (a-2) The comptroller shall [~~may~~] bar a vendor from
8 participating in state contracts that are subject to this subtitle,
9 including contracts for which purchasing authority is delegated to
10 a state agency, if more than two contracts between the vendor and
11 the state have been terminated by the state for cause based on
12 unsatisfactory vendor performance during the preceding three
13 years.

14 SECTION 1.09. Subchapter B, Chapter 2155, Government Code,
15 is amended by adding Section 2155.090 to read as follows:

16 Sec. 2155.090. REPORT ON PERFORMANCE BY AGENCY FOR CERTAIN
17 PROCUREMENTS. (a) This section applies only to a procurement for
18 services with a value of at least \$1 million but not more than \$5
19 million.

20 (b) Before a purchase of services under this chapter, each
21 state agency, including the comptroller, must:

22 (1) create a written report evaluating the feasibility
23 of the agency performing the service that is the subject of the
24 proposed purchase; and

25 (2) if the agency determines from the evaluation that
26 it is not feasible for the agency to perform the service, provide an
27 explanation of why the agency reached that determination.

1 (c) A report created under this section must be included in
2 the procurement analysis for the purchase.

3 SECTION 1.10. Subchapter B, Chapter 2251, Government Code,
4 is amended by adding Section 2251.031 to read as follows:

5 Sec. 2251.031. PAYMENT TO VENDOR. (a) A state agency may
6 not:

7 (1) pay an invoice from a vendor unless the invoice
8 directly correlates to a corresponding contract with the vendor; or

9 (2) make a payment to a vendor more than once per
10 month.

11 (b) A payment by a state agency to a vendor under a contract
12 must receive:

13 (1) the approval and signature of two employees of the
14 state agency; or

15 (2) if a contract manager, as defined by Section
16 2262.001, has been assigned to the contract by the state agency, the
17 approval and signature of the contract manager and one other
18 employee of the state agency.

19 (c) If a finding is made that a payment was made without the
20 signatures required under Subsection (b), the state agency may
21 revoke the payment at any time.

22 SECTION 1.11. Subchapter C, Chapter 2261, Government Code,
23 is amended by adding Section 2261.103 to read as follows:

24 Sec. 2261.103. REQUIRED CONTRACT PROVISIONS. (a) An
25 attorney representing a state agency shall assist in the drafting
26 of a contract to be entered into by the agency in order to include at
27 a minimum the provisions listed in Subsection (b) and other

1 applicable provisions recommended in the contract management guide
2 developed under Section 2262.051.

3 (b) The following are required provisions in each contract
4 to which the provisions are applicable:

- 5 (1) amendments;
- 6 (2) antitrust;
- 7 (3) applicable law and venue;
- 8 (4) applicable law and conforming amendments;
- 9 (5) assignments;
- 10 (6) confidentiality and public information act;
- 11 (7) equal opportunity;
- 12 (8) federal, state, and local law requirements;
- 13 (9) felony criminal convictions;
- 14 (10) financial interests and gifts;
- 15 (11) immigration;
- 16 (12) no conflicts; and
- 17 (13) right to audit.

18 SECTION 1.12. Subchapter D, Chapter 2261, Government Code,
19 is amended by adding Section 2261.152 to read as follows:

20 Sec. 2261.152. DOCUMENTATION REQUIRED FOR PAYMENT. (a) A
21 state agency may not make a payment to a vendor without a contract,
22 invoice, or other documentation that clearly demonstrates the
23 agency's obligation to make a payment.

24 (b) This section does not apply to the return of any amount
25 overpaid by a state agency to a vendor because of an incorrect
26 contract, invoice, or other documentation.

27 SECTION 1.13. Subchapter F, Chapter 2261, Government Code,

1 is amended by adding Section 2261.258 to read as follows:

2 Sec. 2261.258. REPORTING OF CONTRACT VIOLATION. (a) A
3 state employee or member of the public may report to the comptroller
4 a state contracting violation. The comptroller shall investigate a
5 report made under this subsection.

6 (b) A state agency may not suspend or terminate the
7 employment of, or take other adverse personnel action against, a
8 state employee who in good faith reports a violation to the
9 comptroller under this section.

10 (c) If, as a result of an investigation under this section
11 of a state contracting violation that occurred before March 8,
12 2017, savings to the state are realized, the comptroller shall
13 verify the amount of savings and an amount equal to 30 percent of
14 the savings may be appropriated to the comptroller only for
15 distribution to the state employee or member of the public who
16 reported the violation that initiated the investigation.

17 SECTION 1.14. Section 2262.005, Government Code, is amended
18 to read as follows:

19 Sec. 2262.005. CONSULTATION WITH INTERESTED PARTIES [~~STATE~~
20 ~~AGENCIES~~]. The comptroller shall consult with state agencies,
21 vendors, and other interested parties in developing rules, forms,
22 contract terms, guides, manuals, and criteria required under this
23 chapter.

24 SECTION 1.15. Section 2262.051, Government Code, is amended
25 by amending Subsections (a), (b), (c), (d), and (g) and adding
26 Subsections (i) and (j) to read as follows:

27 (a) In consultation with the attorney general, the

1 Department of Information Resources, the [~~comptroller, and the~~
2 state auditor, and state agencies that award major contracts, the
3 comptroller [~~commission~~] shall develop and [~~or~~] periodically
4 update a contract management guide for use by state
5 agencies. Participation by the state auditor under this
6 subsection is subject to approval by the legislative audit
7 committee for inclusion in the audit plan under Section 321.013(c).

8 (b) The comptroller [~~commission~~] may adopt rules necessary
9 to develop or update the guide.

10 (c) The guide must provide information regarding the
11 primary duties of a contract manager, including how to:

- 12 (1) develop and negotiate a contract;
- 13 (2) select a contractor; [~~and~~]
- 14 (3) monitor contractor and subcontractor performance
15 under a contract; and
- 16 (4) encourage competition for goods and services
17 purchased by this state.

18 (d) The guide must include model provisions for state agency
19 contracts. The guide must:

- 20 (1) distinguish between essential provisions that a
21 state agency must include in a contract to protect the interests of
22 this state and recommended provisions that a state agency may
23 include in a contract;

- 24 (2) recognize the unique contracting needs of an
25 individual state agency or program based on the size, nature, and
26 type of goods or services purchased by the state agency or program
27 and provide sufficient flexibility to accommodate those needs,

1 consistent with protecting the interests of this state;

2 (3) include maximum contract periods under which a new
3 competitive solicitation is not necessary; and

4 (4) include the model contract management process
5 developed under Section 2262.104 and recommendations on the
6 appropriate use of the model.

7 (g) The guide must establish procedures under which a state
8 agency is required to:

9 (1) solicit explanations from qualified potential
10 respondents who did not respond to a competitive solicitation for a
11 contract on which fewer than two qualified bids were received by the
12 agency; and

13 (2) develop and implement improved procurement
14 practices.

15 (i) The guide must suggest best practices related to
16 procurement metrics used by a state agency to measure and monitor
17 the effectiveness of the state agency's procurement methods,
18 including the:

19 (1) number and value of procurements made by the state
20 agency;

21 (2) number of canceled procurements by the state
22 agency;

23 (3) reasons for canceled procurements;

24 (4) common exceptions to the state agency's terms and
25 conditions by a respondent;

26 (5) number of responses per competitive solicitation;

27 and

1 (6) average length of time for each phase of the state
2 agency's procurement processes, including the length of time:

3 (A) between the date the state agency issues the
4 competitive solicitation and the date the state agency begins
5 receiving responses to the solicitation;

6 (B) for the evaluation of responses to a
7 competitive solicitation;

8 (C) of the negotiation between the state agency
9 and a vendor; and

10 (D) between the date the state agency issues the
11 competitive solicitation and the date the state agency awards a
12 contract to a vendor.

13 (j) The guide may include references to procurement
14 maturity models and procurement readiness assessments used by other
15 large public and private enterprises.

16 SECTION 1.16. Subchapter B, Chapter 2262, Government Code,
17 is amended by adding Section 2262.056 to read as follows:

18 Sec. 2262.056. CONTRACT MANAGERS REQUIRED FOR MAJOR
19 CONTRACTS. A state agency, at a minimum, shall assign a contract
20 manager for each major contract of the agency to manage the
21 oversight of the contract.

22 SECTION 1.17. Chapter 2262, Government Code, is amended by
23 adding Subchapter E to read as follows:

24 SUBCHAPTER E. CONTRACT OUTSIDE TACTICAL TEAM

25 Sec. 2262.201. DEFINITIONS. In this subchapter:

26 (1) "Information resources" has the meaning assigned
27 by Section 2054.003.

1 (2) "Team" means a contract outside tactical team
2 established under authority provided by this subchapter.

3 Sec. 2262.202. CONTRACT OUTSIDE TACTICAL TEAM. (a) From
4 appropriated funds, a state agency shall enter into a contract with
5 a team for assistance in improving information resources contract
6 management practices for contracts that have a value of at least
7 \$100 million. The team shall review and make recommendations on the
8 solicitation documents, contract documents, scope of work, project
9 timeline and management, documentation requirements, audit
10 schedule and audit scope, and technical issues for the contract.

11 (b) A team consists of the following members selected by the
12 state agency:

13 (1) outside legal counsel; or

14 (2) providers of professional consulting services
15 with expertise in the subject matter of the contract.

16 (c) A state agency may not select a provider of professional
17 consulting services or a group or association of providers or award
18 a contract for the services on the basis of competitive bids
19 submitted for the contract or for the services, but shall make the
20 selection and award:

21 (1) on the basis of demonstrated competence and
22 qualifications to perform the services; and

23 (2) for a fair and reasonable price.

24 (d) A state agency shall:

25 (1) comply with a recommendation made under Subsection
26 (a); or

27 (2) submit a written explanation regarding why the

1 recommendation is not applicable to the contract under review.

2 ARTICLE 2. DELIVERY OF MEDICAID MEDICAL TRANSPORTATION PROGRAM
3 SERVICES

4 SECTION 2.01. Section 531.0057(b), Government Code, is
5 amended to read as follows:

6 (b) Subject to Section 531.024141, the ~~[The]~~ commission may
7 contract with any public or private transportation provider or with
8 any regional transportation broker for the provision of public
9 transportation services.

10 SECTION 2.02. Section 531.02412, Government Code, is
11 amended by adding Subsection (b) to read as follows:

12 (b) As part of the quality review assessment of the Medicaid
13 medical transportation program under Subsection (a)(3), the
14 commission shall hire a single independent vendor with appropriate
15 expertise to conduct surveys of:

16 (1) the satisfaction rates of Medicaid recipients who
17 are receiving medical transportation program services; and

18 (2) the unmet transportation needs of Medicaid
19 recipients who are not receiving medical transportation program
20 services and who are having difficulty obtaining transportation to
21 health care appointments.

22 SECTION 2.03. Section 531.02414(d), Government Code, is
23 amended to read as follows:

24 (d) Subject to Sections 531.024141 and ~~[Section]~~ 533.00257,
25 the commission may contract with a public transportation provider,
26 as defined by Section 461.002, Transportation Code, a private
27 transportation provider, or a regional transportation broker for

1 the provision of public transportation services, as defined by
2 Section [461.002](#), Transportation Code, under the medical
3 transportation program.

4 SECTION 2.04. Subchapter B, Chapter [531](#), Government Code,
5 is amended by adding Section 531.024141 to read as follows:

6 Sec. 531.024141. DELIVERY OF MEDICAID MEDICAL
7 TRANSPORTATION PROGRAM SERVICES. (a) In this section:

8 (1) "Managed transportation organization" has the
9 meaning assigned by Section [533.00257](#).

10 (2) "Medical transportation program" has the meaning
11 assigned by Section [531.02414](#).

12 (b) Notwithstanding any other law, the commission shall use
13 the most cost-effective delivery model for the provision of medical
14 transportation program services throughout the state. In
15 determining the most cost-effective delivery model, the commission
16 shall, on a regional basis, consider using:

17 (1) a managed transportation delivery model in which
18 managed transportation organizations and providers operate under a
19 capitated rate system in accordance with Section [533.00257](#);

20 (2) a fee-for-service delivery model; or

21 (3) other delivery models deemed appropriate by the
22 commission.

23 (c) Before soliciting bids for the provision of medical
24 transportation program services in a region through a managed
25 transportation delivery model or another selected delivery model
26 deemed appropriate by the commission under Subsection (b)(3), the
27 commission must conduct an assessment to determine if the

1 applicable model is more cost-effective than a fee-for-service
2 delivery model. If the commission determines that the managed
3 transportation delivery model or other selected delivery model is
4 potentially more cost-effective than a fee-for-service delivery
5 model, the commission shall establish a cost threshold for
6 accepting bids for the provision of medical transportation program
7 services in the region through a managed transportation delivery
8 model or the other selected delivery model.

9 (d) A cost threshold established under Subsection (c) must
10 be:

11 (1) expressed as a cost per unit, such as a cost per
12 recipient or a cost per trip; and

13 (2) based on historical data for the provision of
14 medical transportation program services through a fee-for-service
15 delivery model in the region.

16 (e) If the commission receives bids at or below the cost
17 threshold established under Subsection (c) from qualified managed
18 transportation organizations or qualified vendors seeking to
19 provide services under the other selected delivery model, the
20 commission shall provide medical transportation program services
21 in the region through a managed transportation delivery model or
22 the other selected delivery model, as applicable, and shall award
23 contracts to managed transportation organizations or vendors based
24 on the price and quality of the services to be provided by the
25 organization or vendor.

26 (f) If the commission is unable to solicit bids from
27 qualified managed transportation organizations or vendors at or

1 below the cost threshold established under Subsection (c), the
2 commission shall provide medical transportation program services
3 through a fee-for-service delivery model in the region.

4 (g) For purposes of this section, a delivery model's
5 cost-effectiveness is based on the price and quality of the
6 services delivered through the model, in addition to any other
7 requirements established by applicable state and federal
8 procurement laws.

9 SECTION 2.05. Sections 533.00257(b) and (c), Government
10 Code, are amended to read as follows:

11 (b) If [~~Subject to Subsection (i),~~] the commission provides
12 [~~shall provide~~] medical transportation program services [~~on a~~
13 ~~regional basis~~] through a managed transportation delivery model in
14 accordance with Section 531.024141, the commission shall use
15 [~~using~~] managed transportation organizations and providers, as
16 appropriate, that:

17 (1) operate under a capitated rate system;
18 (2) assume financial responsibility under a full-risk
19 model;

20 (3) operate a call center;
21 (4) use fixed routes when available and appropriate;

22 and

23 (5) agree to provide data to the commission if the
24 commission determines that the data is required to receive federal
25 matching funds.

26 (c) Subject to Section 531.024141, the [~~The~~] commission
27 shall procure managed transportation organizations [~~under the~~

1 ~~medical transportation program]~~ through a competitive bidding
2 process [~~for each managed transportation region as determined by~~
3 ~~the commission]~~.

4 SECTION 2.06. Sections 533.00257(i) and (j), Government
5 Code, are repealed.

6 SECTION 2.07. Section 531.024141, Government Code, as added
7 by this article, applies to a contract entered into or renewed on or
8 after the effective date of this Act. A contract entered into or
9 renewed before that date is governed by the law in effect
10 immediately before the effective date of this Act, and that law is
11 continued in effect for that purpose.

12 SECTION 2.08. If before implementing any provision of this
13 article a state agency determines that a waiver or authorization
14 from a federal agency is necessary for implementation of that
15 provision, the agency affected by the provision shall request the
16 waiver or authorization and may delay implementing that provision
17 until the waiver or authorization is granted.

18 ARTICLE 3. TRANSITION AND EFFECTIVE DATE

19 SECTION 3.01. Except as otherwise provided by this Act,
20 this Act applies only in relation to a contract for which a state
21 agency first advertises or otherwise solicits bids, proposals,
22 offers, or qualifications on or after the effective date of this
23 Act, and to a payment made under a contract described by this
24 section.

25 SECTION 3.02. This Act takes effect September 1, 2017.